

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SUNSTONE YOGA, LLC and	§	
SUNSTONE FRANCHISING, LLC,	§	
	§	
<i>Plaintiffs,</i>	§	
v.	§	CIVIL ACTION NO. _____
	§	
ROCKY MOUNTAIN YOGA, INC.,	§	
	§	
<i>Defendant.</i>	§	

**PLAINTIFFS’ ORIGINAL COMPLAINT AND
APPLICATION FOR INJUNCTIVE RELIEF**

Plaintiffs Sunstone Yoga, LLC (“Sunstone Yoga”) and Sunstone Franchising, LLC (“Sunstone Franchising”, collectively referred to as “Sunstone”) bring this action for copyright infringement, misappropriation of trade secrets, conversion, theft of property, and injunctive relief against Defendant Rocky Mountain Yoga, Inc. (“Rocky Mountain”) and allege as follows:

I. THE PARTIES

1. Sunstone Yoga is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 2525 Turtle Creek Boulevard, #111, Dallas, Texas 75219.

2. Sunstone Franchising is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 2525 Turtle Creek Boulevard, #111, Dallas, Texas 75219.

3. Rocky Mountain is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business located at 16052 C Deer Ridge Drive, Morrison, Colorado 80465. Rocky Mountain is a nonresident of Texas who does not maintain

offices or a registered agent in Texas but who may be served with process through its registered agent on file with the State of Colorado, or officer or managing or general agent, located at 16052 C Deer Ridge Drive, Morrison, Colorado 80465,

II. JURISDICTION AND VENUE

4. This action arises under the United States Copyright Act of 1974, as amended, 17 U.S.C. §101 et seq. ("Copyright Act"). This Court has jurisdiction over this suit pursuant to 28 U.S.C. §§1331 (Federal Question) and 1338 (Copyright). Additionally, this Court has jurisdiction over this suit pursuant to 28 U.S.C. §1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

5. Rocky Mountain is further subject to the jurisdiction of this Court because it expressly consented to jurisdiction in Dallas, County Texas under Section 23.2 of the March 30, 2007 Franchise Agreement by and between Sunstone Franchising and Rocky Mountain ("Franchise Agreement").

6. Venue is proper because Rocky Mountain expressly consented to venue in Dallas County under Section 23.2 of the Franchise Agreement for the causes of action that are the subject of this Complaint.

III. BACKGROUND FACTS

Sunstone's Franchise

7. Sunstone Yoga and Sunstone Franchising are affiliates.

8. Sunstone Franchising franchises the right to operate exercise studios for yoga practice and instruction in a heat-regulated environment under the trade name, SUNSTONE YOGA[®] ("Franchised Business"). Sunstone Franchising offers a distinct series of classes, each

of which is conducted at its own specific humidity level and room temperature for optimal performance.

9. Sunstone Yoga owns copyrighted software, which is used to communicate with a studio's heating, ventilation, and air-conditioning system to schedule and regulate the temperature and air quality in a room at any given time ("HVAC Software"). The HVAC Software allows the yoga instructors to conduct their classes at the exact temperature and humidity needed for each series of classes, without having to manually adjust the settings each time.

10. Sunstone Yoga has granted Sunstone Franchising a license to use and sublicense the use of the HVAC Software pursuant to a License Agreement dated September 14, 2005.

11. Sunstone Franchising sublicenses the HVAC Software to each of its franchisees for use in their studios but maintains access and control of the HVAC Software remotely, using a master username and password. Franchisees do not have usernames and passwords, nor do they have direct access to the core programming for the HVAC Software. Sunstone Franchising maintains the technical support of the HVAC Software through a third-party company called Lynxspring, Inc. ("Lynxspring").

12. To manage class schedules and customer information, Sunstone Franchising requires that its franchisees utilize a program called Prana Studio. Sunstone Franchising runs Prana Studio on its servers, and franchisees connect to it remotely. Sunstone Franchising uses Prana Studio to monitor its franchisees' class volume and to maintain its confidential customer list ("Customer List"), including customers' credit-card information. Prana Studio also connects to ACH and merchant services for recurring billing and credit-card purchases which is monitored through software called Virtual Terminal.

13. To assist its franchisees with the operation of their studios, Sunstone Franchising loans each franchisee a copy of its confidential operations manual, which contains Sunstone Franchising's trade secrets and confidential information related to the operation of a SUNSTONE YOGA[®] studio ("Confidential Operations Manual").

Sunstone Franchising's Relationship with Rocky Mountain

14. On March 30, 2007, Sunstone Franchising and Rocky Mountain executed the Franchise Agreement for the operation of a SUNSTONE YOGA[®] studio in Littleton, Colorado ("Studio").

15. Rocky Mountain opened the Studio in June 2008, and, until recently, it had operated the Studio under the terms of the Franchise Agreement.

16. In spring 2011, however, Rocky Mountain began committing a series of material breaches under the Franchise Agreement including (i) using its own vendors and marketing resources without first obtaining Sunstone Franchising's approval, as required by Section 13.1 of the Franchise Agreement; (ii) offering classes, such as boot camps and meditations, without Sunstone Franchising's approval, as required by Section 10.1 of the Franchise Agreement; (iii) failing to maintain certified instructors for its classes, as required by Section 8.2 of the Franchise Agreement; and (iv) failing to return Sunstone Franchising's Confidential Operation's Manual when Sunstone Franchising sent them a new version, as required by Section 9.1 of the Franchise Agreement.

17. Sunstone Franchising sent Rocky Mountain a notice of default on June, 10 2011 enumerating Rocky Mountain's breaches and providing Rocky Mountain with an opportunity to cure them ("First Default Notice").

18. Rocky Mountain chose not to cure any of its breaches, and instead, stopped paying royalty and advertising fees, as required under Article 3 of the Franchise Agreement. Rocky Mountain also revoked Sunstone Franchising's access to Rocky Mountain's electronic-deposit transfer account, which is used to electronically transfer royalty fees and advertising fees to Sunstone Franchising.

19. Although Sunstone Franchising had the right to immediately terminate the Franchise Agreement in response to Rocky Mountain's breaches, it instead sent Rocky Mountain a second default notice on July 15, 2011 ("Second Default Notice"). The Second Default Notice gave Rocky Mountain a second opportunity to cure both the original and the new breaches.

20. Upon information and belief and in response to the Second Default Notice, Rocky Mountain removed the internet cable from the HVAC Software computer so that Sunstone Franchising could not access, monitor, or disable the HVAC Software. Rocky Mountain also changed the access passwords to Virtual Terminal so that Sunstone Franchising could not access Prana Studio transactions.

21. Additionally, on or about July 20, 2011, Sam Ezrol, Chief Executive Officer of Rocky Mountain, contacted Lynxspring and claimed that she was having problems with the HVAC Software. She convinced them to come out to the Studio to reset the HVAC Software's master username and password. This allowed Ms. Ezrol to usurp Sunstone Franchising's access and protection to its HVAC Software so that she could use it on her own, without Sunstone Franchising's permission.

22. On July 22, 2011, after disconnecting Sunstone Franchising from Virtual Terminal and the HVAC Software, Rocky Mountain sent a letter to Sunstone Franchising, purportedly terminating the Franchise Agreement ("Termination Notice").

23. Section 16.1 of the Franchise Agreement states that, prior to terminating the Franchise Agreement, Rocky Mountain must be in substantial compliance with the Franchising Agreement and must give Sunstone Franchising written notice of any material breach with the opportunity to cure the breach within 30 days of receipt of the notice.

24. The Termination Notice did not assert that Sunstone Franchising had committed any material breach, nor did it give Sunstone Franchising any opportunity to cure any possible breach.

25. After Rocky Mountain purportedly terminated the Franchise Agreement, Sunstone Franchising cancelled all automatic-membership payments it had with its customers that attended the Studio.

26. Rocky Mountain further misappropriated the credit card information from the Customer List and set up new automatic-membership payments for these customers without obtaining authorization from the customers to do so.

IV. FIRST CAUSE OF ACTION: COPYRIGHT INFRINGEMENT

27. Sunstone repeats and realleges the allegations contained in paragraphs 1 through 26, as if fully set forth herein.

28. Sunstone Yoga owns the copyright to the HVAC Software, which it has licensed to its affiliate, Sunstone Franchising, for use and sublicensing to its franchisees.

29. Effective August 29, 2011, Sunstone Yoga filed its application to register its copyright in its HVAC Software with the United States Copyright Office.

30. Pursuant to 17 U.S.C. §106, Sunstone Yoga owns the exclusive rights to copy, distribute, or create derivative works based upon the HVAC Software.

31. Rocky Mountain has overridden Sunstone Yoga's and Sunstone Franchising's control over the HVAC Software and, upon information and belief, has copied, distributed, and created derivative works of it without Sunstone Yoga's authorization in violation of 17 U.S.C. §501.

32. Upon information and belief, Rocky Mountain's copyright infringement has been, and continues to be, willful, as evidenced in part by Rocky Mountain's manipulation of Lynxspring's technical support to obtain exclusive access to the HVAC Software without Sunstone Franchising's permission, so as to warrant enhancement of damages.

33. Upon information and belief, unless enjoined by this Court, Rocky Mountain intends to continue to wrongfully copy, distribute, and create derivative works of the HVAC Software.

34. As a direct result of Rocky Mountain's acts, Sunstone has already suffered irreparable damage. Sunstone has no adequate remedy at law to redress all of the injuries caused by Rocky Mountain's conduct and will continue to suffer irreparable damage until this Court enjoins Rocky Mountain from further infringement.

35. Sunstone requests a temporary and permanent injunction, restraining Rocky Mountain from engaging in any further acts in violation of the Copyright Act.

36. Furthermore, pursuant to 17 U.S.C. §504(c), Sunstone is entitled to recover for infringement of its HVAC Software in an amount not less than \$750 or more than \$150,000, as determined by the Court.

37. Pursuant to 17 U.S.C. §505, if Sunstone prevails on its claim of Copyright Infringement, it should be awarded its costs, including its reasonable attorneys' fees.

V. SECOND CAUSE OF ACTION: MISAPPROPRIATION OF TRADE SECRETS

38. Sunstone repeats and realleges the allegations contained in paragraphs 1 through 37, as if fully set forth herein.

39. Rocky Mountain has misappropriated Sunstone Franchising's trade secrets.

40. Sunstone Franchising maintains a competitive advantage over other yoga studios, in part, because of its exclusive right to use and sublicense the HVAC Software and its ownership of the Customer List, and Confidential Operations Manual (collectively, "Trade Secrets"), which are not known or readily available to the general public.

41. Rocky Mountain acquired knowledge of Sunstone Franchising's Trade Secrets through its confidential and contractual relationship that prohibited Rocky Mountain from using or disclosing those Trade Secrets. Rocky Mountain violated its obligations to Sunstone Franchising and misappropriated the Trade Secrets for its own benefit by: (i) overriding the master username and password on the HVAC Software so that it could use it without Sunstone Franchising's permission or control; (ii) changing the access passwords to Virtual Terminal so that Sunstone Franchising could not access Prana Studio transactions; (iii) retaining and soliciting customers on the Customer List and imposing unauthorized credit card charges on customers' accounts; and (iv) failing to return Sunstone Franchising's Confidential Operations Manual.

42. Sunstone Franchising seeks unliquidated damages within the jurisdictional limits of this Court.

43. Sunstone Franchising's injury resulted from Rocky Mountain's gross negligence, malice, or actual fraud, which entitles Sunstone Franchising to exemplary damages under Texas Civil Practice & Remedies Code, Section 41.003(a).

VI. THIRD CAUSE OF ACTION: CONVERSION

44. Sunstone repeats and realleges the allegations contained in paragraphs 1 through 43, as if fully set forth herein.

45. Sunstone Franchising has exclusive rights to use and sublicense the HVAC Software and owns the Confidential Operations Manual, and the Customer List, and the Trade Secrets.

46. Rocky Mountain wrongfully exercised dominion and control over Sunstone Franchising's personal property in a manner inconsistent with Sunstone Franchising's rights by using it in a way that departed from the conditions under which it was received. In anticipation of Rocky Mountain's purported termination of the Franchise Agreement, Ms. Ezrol manipulated Lynxspring into giving her personal access to the HVAC Software. Rocky Mountain kept Sunstone Franchising's Customer List and has used it to solicit Sunstone Franchising's customers and to assess unauthorized credit card charges on their accounts. Rocky Mountain has failed to return the Confidential Operations Manual that Sunstone Franchising lent to it, despite Sunstone Franchising's numerous demands for its return.

47. Sunstone Franchising seeks to require the return of the Confidential Operations Manual and unliquidated damages within the jurisdictional limits of this Court.

48. Sunstone Franchising's injury resulted from Rocky Mountain's malice, which entitles Sunstone to exemplary damages under Texas Civil Practice & Remedies Code, Section 41.003(a).

49. Sunstone Franchising is entitled to recover reasonable and necessary attorney fees under Texas Property Code Section 70.008 because this is in part a suit to recover possession of Sunstone's Confidential Operations Manual.

VII. FOURTH CAUSE OF ACTION: THEFT OF PROPERTY

50. Sunstone repeats and realleges the allegations contained in paragraphs 1 through 49, as if fully set forth herein.

51. Rocky Mountain unlawfully appropriated Sunstone Franchising's property in violation of the Texas Theft Liability Act and Texas Penal Code Chapter 31.

52. Sunstone Franchising is entitled to possession of the HVAC Software, the Customer List, the Confidential Operations Manual, and the Trade Secrets.

53. Rocky Mountain unlawfully appropriated Sunstone's personal property in violation of Texas Penal Code Section 31.05.

54. Rocky Mountain's unlawfully appropriated the property without Sunstone Franchising's consent and with the intent to deprive Sunstone Franchising of the property and so that it could continue to use the property after the Franchise Agreement terminated.

55. Rocky Mountain's wrongful conduct has caused injury to Sunstone Franchising, which resulted in the damages set forth below.

56. Sunstone Franchising seeks unliquidated damages within the jurisdictional limits of this Court.

57. Upon proof of actual damages, Sunstone Franchising is entitled to additional statutory damages of up to \$1,000 from Rocky Mountain under Texas Civil Practice & Remedies Code, Section 134.005(a)(1).

58. Sunstone Franchising's injury resulted from Rocky Mountain's malice or actual fraud, which entitles Sunstone Franchising to exemplary damages under Texas Civil Practice and Remedies Code section 41.003(a).

59. Sunstone Franchising is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code Section 134.005.

VIII. FIFTH CAUSE OF ACTION: REQUEST FOR INJUNCTIVE RELIEF

60. Sunstone repeats and realleges the allegations contained in paragraphs 1 through 59, as if fully set forth herein.

61. Sunstone seeks to enjoin Rock Mountain, both during the pendency of this action and thereafter after trial (i) from infringing in any manner on the Sunstone Yoga's copyright in the HVAC Software; and (ii) from using any of Sunstone's Trade Secrets, including its HVAC Software, Customer List, and Confidential Operations Manual.

62. Sunstone further seeks an order compelling Rocky Mountain to return to Sunstone all copies of the Confidential Operations Manual, the Customer List, the HVAC Software, and the Trade Secrets.

63. If this Court does not enjoin Rocky Mountain's activities that infringe on or violate Sunstone's rights, Rocky Mountain will continue its activities, and Sunstone will suffer irreparable injury with no adequate remedy at law.

64. There is a substantial likelihood that Sunstone will prevail on the merits of its causes of action, the injury Sunstone faces outweighs any injury that may be sustained by Rocky Mountain as a result of the injunctive relief requested, and the injunctive relief sought would not adversely affect public policy or public interest.

IX. CONDITIONS PRECEDENT

65. All conditions precedent have been performed or have occurred.

X. PRAAYER FOR RELIEF

66. For these reasons, Sunstone respectfully requests that judgment be entered in its favor and against Rocky Mountain and that the Court grant the following relief to Sunstone:

- a. Statutory damages;
- b. Actual damages in an amount to be determined;

- c. Exemplary damages;
- d. Prejudgment and postjudgment interest;
- e. Enter a preliminary and thereafter permanent injunction against Rocky Mountain's copyright infringement and use of Sunstone's Trade Secrets, including without limitation its HVAC Software, Customer List, and Confidential Operations Manual;
- d. Attorney's Fees;
- f. Court costs; and
- g. All other relief to which Sunstone is entitled and the Court deems just and proper.

Dated: September 23, 2011

Respectfully submitted,

OHASHI & HORN LLP
325 N. St. Paul Street, Suite 4400
Dallas, Texas 75201
214.743.4170
214.743.4179 (Fax)

By: _____ s/ Jeff J. Horn Jr.

Jeff J. Horn, Jr.
State Bar No. 24027234
horn@ohashiandhorn.com
Cody A. Kachel
State Bar No. 24049526
ckachel@ohashiandhorn.com

MULLIN LAW, PC
2425 N. Central Expressway, Suite 200
Richardson, Texas 75080
972.852.0022
972.931.0124 (Fax)

Cheryl Mullin
State Bar No. 24037807
cheryl.mullin@mullinlawpc.com
Christianne Edlund
State Bar No. 24072083
christianne.edlund@mullinlawpc.com

**COUNSEL FOR PLAINTIFFS
SUNSTONE YOGA, LLC AND
SUNSTONE FRANCHISING, LLC**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Sunstone Yoga, LLC
Sunstone Franchising, LLC
(b) County of Residence of First Listed Plaintiff Dallas County, Texas
(c) Attorney's (Firm Name, Address, and Telephone Number) See Attachment.

DEFENDANTS
Rocky Mountain Yoga, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. 101, et seq.
Brief description of cause:
Copyright infringement, misappropriation of trade secrets, conversion, theft of property, and injunctive relief.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 150,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions)
PENDING OR CLOSED:
JUDGE
DOCKET NUMBER

DATE 09/23/2011
SIGNATURE OF ATTORNEY OF RECORD s/ Jeff J. Horn Jr.

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SUNSTONE YOGA, LLC and
SUNSTONE FRANCHISING, LLC,**

Plaintiffs,

v.

ROCKY MOUNTAIN YOGA, INC.,

Defendant.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

ATTACHMENT TO CIVIL COVER SHEET

I. (c)

OHASHI & HORN LLP

325 N. St. Paul Street, Suite 4400

Dallas, Texas 75201

214.743.4170

214.743.4179 (Fax)

Jeff J. Horn, Jr.

State Bar No. 24027234

horn@ohashiandhorn.com

Cody A. Kachel

State Bar No. 24049526

ckachel@ohashiandhorn.com

MULLIN LAW, PC

2425 N. Central Expressway, Suite 200

Richardson, Texas 75080

972.852.0022

972.931.0124 (Fax)

Cheryl Mullin

State Bar No. 24037807

cheryl.mullin@mullinlawpc.com

Christianne Edlund

State Bar No. 24072083

christianne.edlund@mullinlawpc.com

COUNSEL FOR PLAINTIFFS

SUNSTONE YOGA, LLC AND

SUNSTONE FRANCHISING, LLC